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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DENISE MARTINEZ, Defendant and Appellant.	B262154 (Los Angeles County Super. Ct. No. BA420756)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dennis J. Landin, Judge. Affirmed with directions.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Denise Martinez of two felonies: "operation of chop shop" (Veh. Code, § 10801, count 1), and receiving stolen property (Pen. Code, § 496d, subd. (a), count 2). The trial court reduced both counts to misdemeanors, suspended imposition of sentence, and placed appellant on three years probation.

Appellant contends there was insufficient evidence to support the jury's verdicts and that the trial court violated her constitutional rights by denying her posttrial requests for substitution of counsel and for a continuance. We disagree. We affirm the judgment, but direct the trial court to impose additional fees.

FACTS

Prosecution Case

At the time of the following events, appellant leased the property at 3201 South Maple Street in Los Angeles (the property), which included a large warehouse with a living space, other buildings, and a parking lot and yard. She lived in the warehouse's living space and operated an art studio in part of the warehouse. She also rented out portions of the property to other tenants, including her boyfriend, Roberto Gavarrette (Gavarrette).

July 29, 2013—Arrest of Gavarrette

On July 29, 2013, Los Angeles Police Department (LAPD) Detective Julie Woodley received a call that a LoJack-equipped vehicle had been stolen and located at the property. Detective Woodley went to the property, where she observed numerous vehicle parts and interiors in a big pile and in good condition. She questioned Gavarrette, while appellant stood three or four feet away, listening and attentive.

Detective Woodley saw a Cadillac Escalade, a GM door, a half door for an extra truck cab, and eight Cadillac leather seats. Appellant said the warehouse was a collective of metal and displayed art.

On the same day, LAPD Detective Jeannette Santos also went to the property to investigate it as a possible chop shop. A chop shop is used to dismantle and disassemble vehicles to conceal their true identifies since they are stolen or illegally obtained.

Detective Santos saw a Cadillac Escalade. Its ignition had been tampered with and parts had been removed. Detective Santos also saw several vehicles and auto parts in a huge pile. Labels had been removed from doors to conceal the identity of the doors, engines had been removed, and hoses were cut in irregular manners. Her observations led her to believe that chop shop activity was taking place and that 11 cars she saw at the property were stolen.

Detective Santos arrested Gavarrette and charges were filed against him for operating a chop shop and possessing a stolen vehicle. Detective Santos was present for Gavarrette's trial. Appellant testified at Gavarrette's trial, stating that "Charlie" brought all the stolen parts to the property on July 29, 2013, and that appellant did not see Charlie after that day. Appellant also testified that she allowed Gavarrette to do minor repairs on cars after Charlie disappeared. Gavarrette was acquitted at trial.

January 2014— Investigation and Arrest of Appellant

On January 3, 2014, LAPD Detective Lorenzo Barbosa went to the property, where he saw Gavarrette cutting an undamaged red van into pieces and throwing the pieces into a Bobtail truck. Appellant was standing 10 to 12 feet away from Gavarrette. A BMW nearby had a scratch on it, which was consistent with vandalism. The front set of wheels was different than the rear set of wheels. Detective Barbosa later discovered that the BMW had been stolen.

Detective Barbosa also saw a 1970 blue Camaro that was being painted black about 70 feet away from where appellant was standing. The steering column was broken and the ignition was "punched," which indicated that the vehicle was stolen. The fenders, doors, and hood had been removed. The parties stipulated that the Camaro had been stolen from a secured parking lot. Detective Barbosa saw registration and license plates to a 1971 Camaro, which did not belong to the stolen Camaro.

Detective Barbosa also saw a disassembled GMC Denali. The Denali's steering column was inside a Mitsubishi Montero that was parked near the art studio. Other parts of the Denali, including the wheels and tires, were scattered throughout the warehouse. Inside the Bobtail truck, Detective Barbosa found multiple parts from the Denali, as well

as the dashboard to a Nissan. Appellant and Gavarrette did not have any receipts for the auto parts and components.

On January 23, 2014, at approximately 7:45 a.m., Detective Barbosa returned to the property to serve a search warrant. He forcefully knocked on the door with his flashlight. No one answered. He went to an open window and communicated with appellant and Gavarrette, who were in bed. The window was 10 feet or less from where cars pulled in and out of the property. After he entered the property, Detective Barbosa saw various vehicle components throughout the living quarters and found a car radio mixed in with some clothes. Appellant and other tenants were arrested.

Defense Case

John Sorrentino (Sorrentino) owned the property, and appellant paid him monthly rent of $3,800. Appellant sublet some of the property with Sorrentino's consent, and Gavarrette was also a tenant. There were cars in the warehouse space and appellant had art at the property.

Appellant testified that she was 46 years old, had four grown children, was a self-employed artist and community organizer and had never had trouble with the law prior to this case. She had never driven or owned a vehicle. Appellant had lived and worked at the property for three years. Other tenants were car mechanics, and there were a lot of people and cars coming and going. After the police came and arrested Gavarrette in July 2013, she was never warned that an illegal chop shop was being operated at the property. She welcomed Gavarrette back because she knew he was innocent.

After the police visit in July 2013, Charlie left and there were fewer cars coming and going.

When Detective Barbosa and other officers returned to the property on January 23, 2014, appellant was handcuffed and taken outside to the sidewalk. Detective Barbosa told her that he wanted the community to see who she really was. Appellant never knew that there were stolen cars or stolen car parts at the property, and did not know the property was being used as a chop shop.

Two artists testified that appellant was a well-known artist and that they had been to the property several times without seeing any cars or car parts.

Rebuttal

Gavarrette did not have any kind of license to do auto work on the property. Detective Barbosa did not find any receipts showing lawful ownership of parts on the property. Detective Barbosa did not tell appellant that he wanted people to see who she really was.

DISCUSSION

I. Substantial Evidence Challenge

A. Standard of Review and Aider and Abettor Liability

A defendant raising a claim that the evidence was insufficient to support a jury's verdict bears a "massive burden" because this court's "role on appeal is a limited one." (*People v. Akins* (1997) 56 Cal.App.4th 331, 336.) "'In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Steele* (2002) 27 Cal.4th 1230, 1249.) We presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053; *People v. Hoang* (2006) 145 Cal.App.4th 264, 275.) We do not reweigh evidence, reappraise the credibility of witnesses, or resolve conflicts in the evidence, as these functions are reserved for the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) This standard applies whether direct or circumstantial evidence is involved. (*People v. Thompson* (2010) 49 Cal.4th 79, 113.) Reversal is not warranted unless it appears "'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

"[A]n aider and abettor is a person who, 'acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids,

promotes, encourages or instigates, the commission of the crime.'" (*People v. Prettyman* (1996) 14 Cal.4th 248, 259, quoting *People v. Beeman* (1984) 35 Cal.3d 547, 561.) Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to prove aiding and abetting. (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.) However, factors such as presence at the scene of the crime, companionship with the perpetrators, and conduct before and after the offense may circumstantially prove aiding and abetting. (*Ibid*.) "'Whether defendant aided and abetted the crime is a question of fact, and on appeal all conflicts in the evidence and reasonable inferences must be resolved in favor of the judgment.'" (*Ibid*.)

B. Chop Shop Conviction

Appellant contends "insufficient evidence supported the conviction for aiding and abetting a chop shop operation by renting to Gavarrette because appellant had no duty to evict and no evidence of the requisite specific intent was presented."

Vehicle Code section 10801 provides that "Any person who knowingly and intentionally owns or operates a chop shop is guilty of a public offense."

Vehicle Code section 250 defines a "chop shop" as "any building, lot, or other premises where any person has been engaged in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to do either of the following: [¶] (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number, of a motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part. [¶] (b) Sell or dispose of the motor vehicle or motor vehicle part."

According to appellant, the prosecutor "described appellant's crime as failing to evict Gavarrette after his first arrest, thus knowingly operating a chop shop through him." But, as the People point out, appellant misstates the prosecutor's theory. The prosecutor argued that appellant was an aider and abettor because she helped Gavarrette commit

chop shop operations "by providing the place where the crime is committed knowing this crime is being committed." Substantial evidence supports her conviction.

On July 29, 2013, when the police traced a stolen vehicle using LoJack to the property, they found several vehicles at the property, and auto parts were in a huge pile in the warehouse area. When Detective Woodley questioned Gavarrette about the vehicle parts and interiors, appellant was standing right there, listening and attentive. Appellant testified at Gavarrette's trial that someone identified as "Charlie" brought the stolen parts to her warehouse. Thus, appellant was aware that stolen vehicles and stolen auto parts were inside the warehouse as early as July 29, 2013. Approximately six months later, on January 3, 2014, Detective Barbosa went to the property, where he saw Gavarrette cutting an undamaged red van into pieces and throwing the pieces into a Bobtail truck. Appellant was standing only 10 to 12 feet away from Gavarrette. Nearby, was a stolen BMW with different sets of tires, a stolen Camaro, and a GMC Denali. Vehicle parts from the Denali were scattered throughout the warehouse. Appellant and Gavarrette did not have any receipts for the auto parts and components. When Detective Barbosa went back to the property a few weeks later with a search warrant, appellant and Gavarrette were in bed together, and their bedroom window was only 10 feet from where cars pulled in an out of the warehouse. Detective Barbosa found various vehicle parts scattered throughout the living quarters. The jury could reasonably infer that appellant knew Gavarrette was altering, destroying, disassembling, dismantling and storing at the property motor vehicles and motor vehicle parts that had been stolen or illegally obtained.

Appellant argues there was no evidence that she possessed the requisite specific intent to aid and abet the operation of a chop shop. Her argument is apparently based on her own self-serving testimony at trial that she never knew stolen cars or stolen car parts were on the property and did not know the warehouse was used as a chop shop. The jury heard appellant's self-serving defense and rejected it. We must do likewise. "The trier of fact is the sole judge of the weight and worth of the evidence. [Citations.]" (*People v. Hills* (1947) 30 Cal.2d 694, 701.)

We are satisfied there was substantial evidence from which the jury could infer that appellant was aiding and abetting the operation of a chop shop.

C. Receiving Stolen Property[1]

Appellant argues there was no evidence she knew the Camaro at the property was stolen. We reject this argument.

Appellant ignores that she agreed to stipulate that the Camaro was stolen. Specifically, she stipulated that "Robert Winters is the owner of the Camaro depicted in the People's exhibits, specifically, the black Camaro, . . . and that Mr. Winters discovered the Camaro stolen from a secured parking lot where he stored it; after being advised by Detective Barbosa the vehicle was found at 3201 South Maple, the location at issue in this case."

"'Unless the trial court, in its discretion, permits a party to withdraw from a stipulation [citations], it is conclusive upon the parties, and the truth of the facts contained therein cannot be contradicted. [Citations.]' [Citation.] A stipulation is also binding on the court where the stipulation is not contrary to law, court rule or policy. [Citation.]." (*Robinson v. Workers' Comp. Appeals Bd*. (1987) 194 Cal.App.3d 784, 790.) The trial court instructed the jury that the stipulation meant that both parties accepted the fact as true, that there was no dispute as to the fact, and that the jury "must also accept" the fact as true. Thus, the stipulation that the Camaro was stolen is binding on appellant and established that she knew it was stolen.

Moreover, there was substantial evidence that appellant knew the Camaro was stolen. When Detective Barbosa first went to the property, he saw the Camaro approximately 70 feet away from where appellant was standing. The steering column was broken and the ignition was punched, which indicated that the vehicle was stolen. While appellant asserts there was no proof she saw the broken column or punched ignition, the evidence also showed that the Camaro's fenders, doors, and hood had been

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[1] Penal Code section 496d, subdivision (a) provides in relevant part that every person who "aids in concealing, selling, or withholding any motor vehicle . . . from the owner, knowing the property to be so stolen or obtained, shall be punished."

removed and that it was being painted black. Appellant and Gavarrette had no paperwork showing they owned the Camaro. And appellant had testified at Gavarrette's trial that Charlie brought stolen parts to the property. "Possession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his [or her] guilt." (*People v. McFarland* (1962) 58 Cal.2d 748, 754.)

II. Requests for New Counsel and Continuance

Appellant contends the trial court violated her Fifth Amendment right to due process and Sixth Amendment right to counsel when it denied her request to relieve retained counsel and substitute new retained counsel and denied her request for a continuance to prepare a new trial motion.

A. Relevant Proceedings

The jury reached its verdicts on November 13, 2014. On December 4, 2014, appellant's retained trial counsel, Marcus Musante, informed the trial court that appellant intended to file a new trial motion. The court granted Mr. Musante until December 23, 2014, to file the new trial motion.

On December 23, 2014, appellant requested to substitute Elliott Tiomkin for Mr. Musante for purposes of filing a motion for new trial and sentencing. The trial court explained to appellant that because Mr. Tiomkin had represented Gavarrette at his trial and now represented a third defendant involved in these crimes, Miguel Omar (Omar), there would be a "substantial conflict of interest." The court told appellant that Mr. Tiomkin "would have to decide which one of you three is the most important client. This is a serious conflict of interest." The court further stated that to "hire someone who represents other people in the same case is very unusual and ill-advised. It creates huge problems for the lawyer. Also, it could be to your detriment." The court told appellant to talk to Mr. Musante about the potential conflict, and said it would consider the request if appellant waived the conflict and the waiver would have to be in writing and signed off by Mr. Musante. The court asked Mr. Musante if he had ordered a portion of the

transcripts. Mr. Musante said he ordered portions which he thought were relevant and had received them that day. The case was continued to January 8, 2015.

On January 8, 2015, Mr. Tiomkin appeared and said he had been retained by appellant. The trial court told him that there was a substantial conflict of interest and that it was not sure if his representation of appellant was "appropriate or even ethical." Mr. Tiomkin stated that Gavarrette's trial ended in a not guilty verdict and Gavarrette had signed a waiver, which the court asked to see. Mr. Tiomkin said that he was not asked to bring it in, but would provide it to the court. Mr. Tiomkin also stated that he had obtained a waiver from Omar, whose case was still pending. Mr. Tiomkin said there had been a discussion in which appellant wanted him and Mr. Musante to jointly represent her.

The trial court asked Mr. Tiomkin if he was prepared to go forward because "[t]oday is the sentencing hearing." Mr. Tiomkin said he was not ready and that there were issues related to the motion for new trial that needed to be handled before sentencing, such as requesting and reviewing transcripts and further investigation. Specifically, Mr. Tiomkin said the prosecutor had made a representation that a witness was available to testify when in fact the witness was not available, and that the representation was the reason the parties entered into the stipulation regarding the Camaro. The prosecutor argued against the continuance stating that the verdicts were reached more than two months earlier and that appellant could have already completed her investigation.

Mr. Tiomkin asked if a motion for new trial had been filed. The trial court said no because presumably there was no legitimate basis for a new trial motion. The court added that appellant had testified "and apparently the jurors did not believe her when she said she didn't know. She was substantially impeached I thought. The jurors reached a verdict, and I don't think it's appropriate to change that." The court asked Mr. Tiomkin what the witness would have said without the stipulation. Mr. Tiomkin responded that the stipulation was the only evidence to support the count of receiving stolen property. When the court asked Mr. Tiomkin if he was saying that the Camaro was properly

conveyed to someone working at the property, Mr. Tiomkin said no, but there were a "number of issues" he wanted to raise in a motion for new trial. The court said appellant had the right to file a motion for new trial in a timely manner and the time had passed.

Mr. Musante said that he had started working on the motion for new trial, but appellant told him she did not want him as her attorney, so he stopped. The court indicated that it was not going to send appellant to jail and would reduce the two counts to misdemeanors. Appellant waived arraignment for judgment and time for sentencing, and the court proceeded to sentence her.

B. Analysis

"The right of a nonindigent criminal defendant to discharge his retained attorney, with or without cause, has long been recognized in this state [citations]. . . ." (*People v. Ortiz* (1990) 51 Cal.3d 975, 983.) "A nonindigent defendant's right to discharge his retained counsel, however, is not absolute. The trial court, in its discretion, may deny such a motion if discharge will result in 'significant prejudice' to the defendant [citation], or if it is not timely, i.e., if it will result in 'disruption of the orderly processes of justice' [citations]." (*Id*. at pp. 983–984.)

"Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest." (*Wood v. Georgia* (1981) 450 U.S. 261, 271.) "When the trial court knows, or reasonably should know, of the possibility of a conflict of interest on the part of defense counsel, it is required to make inquiry into the matter." (*People v. Bonin* (1989) 47 Cal.3d 808, 836.)

Given the trial court's finding of a "substantial conflict of interest," the court rightly told appellant's counsel, Mr. Musante, that any waivers had to be in writing. California Rules of Professional Conduct, Rule 3-310(C) states: "A member shall not, without the informed written consent of each client: [¶] (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or [¶] (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or [¶] (3) Represent a client in a matter and

at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

"Rules of Professional Conduct, rule 3-310(C) prohibits an attorney from, without the informed consent of each client, accepting representation of more than one client in a matter in which the interests of the clients potentially or actually conflict." (*Edward Wildman Palmer LLP v. Superior Court* (2014) 231 Cal.App.4th 1214, 1232.) Thus, contrary to appellant's suggestion, rule 3-310(C) prevented Mr. Tiomkin from representing appellant without informed written consent signed by appellant, Gavarrette and Omar. Mr. Tiomkin never presented such written consent to the trial court.

In any event, the trial court could have properly determined that Mr. Tiomkin's representation of appellant would have resulted in significant prejudice to appellant because he represented two of her codefendants who potentially or actually had adverse interests to appellant. Allowing appellant to substitute Mr. Tiomkin in as her attorney could have resulted in a situation where appellant's convictions and sentence would have been subject to automatic reversal and then retrial. (See *Holloway v. Arkansas* (1978) 435 U.S. 475, 489.)

Additionally, the trial court could have properly denied the request to substitute counsel as untimely. Appellant sought to substitute counsel on the date set for sentencing and the new trial motion. This meant that appellant's request could not be granted without causing a significant disruption, i.e., a further delay in appellant's sentencing and filing of a new trial motion.

We find no violation of appellant's constitutional rights to substitute new counsel.

Moreover, the trial court did not abuse its discretion in denying appellant's request for a continuance to file a new trial motion. An order denying a continuance is seldom successfully attacked. (*People v. Beeler* (1995) 9 Cal.4th 953, 1003.) Once a continuance has been denied, the burden is on the appellant to establish an abuse of discretion. (*Ibid.*; *People v. Rhines* (1982) 131 Cal.App.3d 498, 506.) "In determining whether a denial was so arbitrary as to deny due process, the appellate court looks to the

circumstances of each case and to the reasons presented for the request. [Citations.]" (*People v. Frye* (1998) 18 Cal.4th 894, 1013.)

On December 4, 2014, appellant's counsel, Mr. Musante, informed the trial court that he would exercise "due diligence" and file the motion for new trial. The court granted appellant's counsel until December 23, 2014, or 19 days, to file appellant's new trial motion. On December 23, 2014, Mr. Musante informed the court that appellant wanted Mr. Tiomkin to represent her. The court again granted another continuance of 16 days until January 8, 2015. Appellant was granted 35 days, or more than one month, to file her new trial motion on a relatively simple case involving two charges that were reduced to misdemeanors. The trial court did not abuse its broad discretion by denying appellant's motion for continuance to file a new trial motion when she was provided with a reasonable amount of time to prepare that motion. (See *People v. Alexander* (2010) 49 Cal.4th 846, 935.)

III. Correction of Sentence

The People contend that appellant's sentence should be corrected to reflect additional fees. The People are correct.

When a trial court fails to impose a statutorily mandated fine or fee an unauthorized sentence results which an appellate court is empowered to correct. (*People v. Turner* (2002) 96 Cal.App.4th 1409, 1413; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1255.)

Penal Code section 1465.8, subdivision (a)(1), states: "To assist in funding court operations, an assessment of forty dollars ($40) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code." "[S]ection 1465.8 unambiguously requires a fee to be imposed for each of defendant's convictions. Under this statute, a court security fee attaches to 'every conviction for a criminal offense.'" (*People v. Schoeb* (2005) 132 Cal.App.4th 861, 865; see *People v. Crittle* (2007) 154 Cal.App.4th 368, 370.)

Additionally, "Government Code section 70373, subdivision (a)(1), which provides for imposition of the court facilities assessment, states in part: 'To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense . . . . The assessment shall be imposed in the amount of thirty dollars ($30) for each misdemeanor or felony . . . .'" (*People v. Woods* (2010) 191 Cal.App.4th 269, 272.)

Appellant was convicted on two counts, but the trial court only imposed one $40 court security fee and one $30 court facilities assessment fee. Thus, the trial court is directed to modify the sentence by imposing such fees on both counts.

DISPOSITION

The trial court is directed to modify appellant's sentence by adding one $40 court security fee pursuant to Penal Code section 1465.8, subdivision (a)(1) and one $30 court facilities assessment fee pursuant to Government Code section 70373, subdivision (a)(1), and forwarding a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT